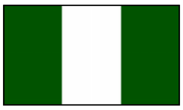

Nigeria❖

Aadedeji Babatunde Abiodun[1†]

The Federal Republic of Nigeria is located in West Africa and shares land borders with the Republic of Benin in the west, Chad and Cameroon in the east, and Niger in the north. Its coast in the south lies on the Gulf of Guinea on the Atlantic Ocean. The country consists of 36 states and 774 local government administrations. The administrative headquarters and Capital City is Abuja, located in the Federal Capital Territory, which is geographically situated in the middle of the country.

With a population of over 162 million, Nigeria is obviously the largest market in sub-Saharan Africa with reasonably skilled and potential manpower for efficient and effective management of investment projects within the country.

PROFILE	
Population:	162.4 million*
GDP (Current US$):	235.9 billion*
Per Capita Income: (Current US$)	2,069 (Atlas method)* (at PPP.)*
Surface Area:	923.8 thousand sq. km*
Life Expectancy:	52 years*
Literacy (%):	60.8 (of ages 15 and above)*
HDI Rank:	156*

Sources:
- World Bank Development Indicators Database, World Bank, 2011
- Human Development Report Statistics, UNDP
(*) For the year 2011

Economy[1]
Oil-rich Nigeria has been hobbled by political instability, corruption, inadequate infrastructure, and poor macroeconomic management, but in 2008 began pursuing economic reforms. Nigeria's former military rulers failed to diversify the economy away from its overdependence on the capital-intensive oil sector, which provides 95 percent of foreign exchange earnings and about 80 percent of budgetary revenues.

Following the signing of an IMF stand-by agreement in August 2000, Nigeria received a debt-restructuring deal from the Paris Club and a US$1bn credit from the IMF, both contingent on economic reforms. Nigeria pulled out of its IMF programme in April 2002, after failing to meet spending and exchange rate targets, making it ineligible for additional debt forgiveness from the Paris Club.

In November 2005, Abuja won Paris Club approval for a debt-relief deal that eliminated US$18bn of debt in exchange for US$12bn in payments – a total package worth US$30bn of Nigeria's total US$37bn external debt.

Since 2008 the government has begun to show the political will to implement the market-oriented reforms urged by the IMF, such as modernising the banking system, removing subsidies, and resolving regional disputes over the distribution of earnings from the oil industry. GDP rose strongly in 2007-12 because of growth in non-oil sectors and robust global crude oil prices. President JONATHAN has established an economic team that includes experienced and reputable members and has announced plans to increase transparency, diversify economic growth, and improve fiscal management. Lack of infrastructure and slow implementation of reforms are key impediments to growth.

The government is working toward developing stronger public-private partnerships for roads, agriculture, and power. Nigeria's financial sector was hurt by the global financial and economic crises, but the Central Bank governor has taken measures to restructure and strengthen the sector to include imposing mandatory higher minimum capital requirements.

Competition Evolution and Environment
Nigeria's current industrial policy thrust is anchored on a guided deregulation of the economy and the Government's dis-engagement from activities, which are market-oriented. This leaves the government to play the role of facilitator,

❖ Original paper written (2006-07) & updated in November 2012 focusing on the provision of incentives, policy and infrastructure, which are necessary to enhance the private sector role as the engine of growth. The industrial policy is intended to:

- generate productive employment and raise productivity;
- increase exports of locally manufactured goods;
- create a wider geographical dispersal of industries;
- improve the technological skills and capability available in the country;
- increase the local content of industrial output by looking inward for the supply of basic and intermediate inputs; and
- increase private sector participation.

The Federal Ministry of Trade and Investment has just completed the review of the trade regime and produced a draft of Nigeria's Trade Policy for the first time in 10 years.

The Nigerian Enterprises Promotion Acts, which hitherto regulated the extent and limits of foreign participation in diverse sectors of the economy and inhibited competition, were repealed in 1995. The principal laws regulating foreign investments now are: the Investment Promotion Commission Decree No. 16 of 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No. 17 of 1995. Both laws promote competition in the economy.

Given the need to stabilise the banking and finance sectors, and promote confidence in these vital institutions, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decrees of 1994 were put in place. The Investment and Securities Decree was also promulgated to update and consolidate capital market laws and regulations into a single code.

Under the Privatisation and Commercialisation Law of 1988, the government successfully sold its holdings in industrial enterprises and financial institutions, and such divestments were made by way of 'offers for sale' on the floor of the Exchange, so that ultimate shareholdings in such enterprises could be widespread. However, the Government retained full control of the public utility service corporations.

The 1997 Budget proposed the repeal of all existing laws that inhibited competition in certain sectors of the economy. Consequently, with the promulgation of the Public Enterprises Promotion and Commercialisation Decree in 1998, private sector investors (including non-Nigerians) are now free to participate in, and compete with, Government-owned public utility service corporations in the areas of: telecommunication, electricity generation, exploration of petroleum, export refineries, coal and bitumen exploration, hotel and tourism.

Competition Law and Policy

At present, Nigeria is yet to develop its competition law. There are past and present efforts aimed at achieving competition law for Nigeria. Nonetheless, competition cases or issues in various sectors of the economy are handled at present, directly or indirectly, by the following regulatory institutions, among others:

1. The Nigerian Investment Promotion Commission (NIPC);
2. Nigerian Communication Commission (NCC);
3. Central Bank of Nigeria (CBN);
4. Securities and Exchange Commission (SEC);
5. Consumer Protection Council (CPC);
6. Special Trade Malpractices Investigation Panel;
7. National Agency for Food and Drug Administration and Control (NAFDAC);
8. Standards Organisation of Nigeria (SON);
9. Petroleum Products Pricing Regulatory Agency (PPPRA);
10. Nigerian Civil Aviation Authority (NCAA);
11. National Broadcasting Commission (NBC);
12. National University Commission (NUC); and
13. Nigeria Tourism Board (NTB).

Towards Operationalising Competition Law

The government of Nigeria is yet to adopt a competition law for the country. But progress has been made towards operationalising the competition law in Nigeria. Some of these efforts are:

(i) multiple efforts made to adopt competition legislation with the development of six versions of draft competition bills, but so far none of these has been successful,

(ii) with the support of the UK's Department for International Development (DFID), Canada's International Development Research Centre (IDRC) and the Ministry of Foreign Affairs of Sweden, CUTS International in partnership with Consumers Empowerment Organisation of Nigeria (CEON) implemented in Nigeria, a two year project entitled 'Strengthening Constituencies for Effective Competition Regimes in Selected West African Countries' (7Up4 Project) from 2008-2010, which aimed to raise the profile of competition at the national and the regional levels in West Africa. The project highlighted the relevance and need for an effective competition regime for economic development and poverty reduction in the select West African countries and Nigeria.

(iii) there was also the TradeCom Project AOR. 190-P213 – Technical Assistance in support of a National Competition Policy, implemented in Nigeria from October 2011 to March 2012, funded by the European Development Project. Though implementation of this project was inconclusive, purpose of the TradeCom project was to:

   - ■ facilitate the introduction and implementation of a comprehensive competition regulation regime in the Federal Republic of Nigeria which would ensure that domestic markets are not distorted by local and cross-border anti-competitive practices and thus contribute to economic efficiency, consumer welfare, regional integration and good governance, and

- increase the competitiveness of the Nigerian economy leading to significant welfare improvements for domestic consumers.

(iv) The Federal Ministry of Trade and Investment is currently preparing a National Competition Policy for Nigeria. It is expected that when the Nigeria Competition Policy is finalised process for the adoption of a consensus Competition Bill for Nigeria will resume.

Anticompetitive Business Practices

Trade Malpractices Decree 1992

This law pinpoints certain offences relating to trade malpractices and sets up a Special Trade Malpractices Investigation Panel to investigate such offences. The law is violated by any person who:

- falsely labels, packages, sells, offers for sale or advertises any product so as to mislead as to its quality, character, brand, name, value, composition, merit or safety;
- for the purpose of sale, contract or other dealing, uses or intends to use any weight, measure or number which is false or unjust;
- sells any product by weight, measure or number and delivers to the purchaser a less weight, measure or number than is purported to be sold;
- advertises or invites subscription for any product or project which does not exist.

Sectoral Regulation

Telecommunications Sector

The Nigerian Communications Commission (NCC) is the National Regulatory Authority for the telecommunications industry in Nigeria. The broad business purpose of the NCC, as derived from the enabling Decree 75 of 1992, is to facilitate private sector participation in telecommunications service delivery, coordinate and regulate the activities of the operators to ensure consistency in availability of service delivery and fair pricing.

The objectives of the NCC are to:

- promote effective competition in the market, to ensure fair pricing of good quality of telecommunications services;
- encourage massive investment in the telecommunications Sector;
- extend availability of telecommunications services to all Nigerians; and
- protect licensees and the public from the unfair conduct of other providers of telecommunications services, with regard to the quality of service and payment of tariffs.

Whilst functions of the NCC include:

- licensing telecommunications operators, and facilitating private sector participation and investment in the telecommunications sector of the Nigerian economy;
- establishing and supervising technical and operational standards and practices, as well as type approval of equipment for operators, overseeing the quality of service provided by operators and setting terms for the interconnection of different networks;
- ensuring that promoting competitive pricing of such services and combating the abuse of market power protects the interests of the consumer of telecommunication services; and
- mediating between operators, carriers and consumers.

Energy Sector[2]

The National Electric Power Authority (NEPA) was formally the government-owned utility responsible for generation, transmission and distribution of electricity throughout Nigeria.

.

The Power Holding Company of Nigeria (PHCN) has been incorporated in July 2005 as an initial holding company as provided in the Electric Power Sector Reform (EPSR) Act 2005. Since its formation, PHCN took over all NEPA assets and liabilities as NEPA finally transforms to PHCN.

Now that power sector in Nigeria has been fully privatised, The Nigeria Ministry of Power has taken series of reforms in the power industry. The Ministry has launched the Roadmap for Power Sector Reform. The Roadmap was launched by President in August 2012 and it sets out a clear implementation plan of the Electricity Power Sector Reform Act (2005) as a reaffirmation of the commitment to resolve the power crises and setting the path for power sector Improvement. The requisite environment for private sector investment in the Nigerian Power Sector has been created by establishing a credit-worthy off taker of power, Nigerian Bulk Electricity Trading Plc (NBET Plc), who provides confidence to the power generating companies that they will be paid for power produced.

Also, since this administration began, rehabilitation of existing power infrastructure has yielded up to 1000MW of electricity. A new peak generation of 4,322MW was delivered in December 2011. This is the highest/maximum capacity ever attained. The President Jonathan Administration has fast-tracked the development of National Integrated Power Projects (NIPP) power plant and an additional 1,055MW of generation capacity is expected from three power plants nearing completion: Ihovbor, Geregu Phase 2 and Alaoji by the end of 2012.

President Goodluck Jonathan has launched the Energy Efficiency and Energy Conservation Lighting Scheme also, this is to promote and encourage the use of energy efficient

Box 1: Consumers Protest Cellphone Services

On September 19, 2003, for the first time in the history of Nigeria, consumers in the Telecommunication Sector (GSM Phone Sub Sector) organised themselves to protest against poor services provided by the MTN, ECONET (now Vodacom) and NITEL (Mtel), the three GSM Phone Service Providers in Nigeria, working in collusion.

Consumers switched-off their handsets nationwide, on September 19, 2003, to protest against the poor services and abuses of the three GSM Phone companies: arbitrary deduction of credits, uncompleted calls, poor signals, high tariffs, interconnectivity problems, constant changes in contract terms, misleading advertisement on new services and per minute billing charges, among other abuses.

With the successful one-day protest, the three GSM service providers, as reported in the press, lost millions of Naira due the one-day protest and were forced to improve on their services and terms since then.

Consumers were able to coordinate themselves through text messages exchanged amongst them.

According to a survey conducted by the Consumers Association of Nigeria on September 19, 2003, and reports of the protest monitored in both print and electronic media, the one-day protest was a total success as some 80-90 percent of GSM Phone consumers in Nigeria switched-off their handsets in compliance with the boycott directives.

Source: Survey conducted by the Consumer Affairs Movement of Nigeria (CAMON) now CEON on September 19, 2003

bulbs and lighting systems in order to create an energy conservation culture in Nigeria.

Consumer Protection

The Consumer Protection Council has been established in Nigeria under decree No. 66 of 1992 with the objectives to:

- provide speedy redress to consumer complaints through negotiations, mediation and conciliation;
- seek ways and means of removing, from the market, hazardous products; and cause offenders to replace such products with safer and more appropriate alternatives;
- publish, from time to time, a list of products whose consumption and sale have been banned, withdrawn, restricted, or not approved by the Nigerian Government or foreign governments;
- cause an offending company, firm, trade association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, violent or highly hazardous;
- organise and undertake campaigns and other forms of activities, that will lead to increased public consumer awareness;
- encourage trade, industry and professional associations to develop and enforce, in their various fields, quality standards designed to safeguard the interests of consumers; and
- encourage the formation of voluntary consumer groups or associations for consumers' well being.

In the exercise of its functions, the Council is empowered to apply to court in preventing the circulation of any product, which constitutes an imminent public hazard; and/or compels a manufacturer to certify that all safety standards are met in their products.

Concluding Observations and Future Scenario

Nigeria is gradually forging ahead in its quest for putting in place a competition regime in the country. Presently the Federal Ministry of Trade and Investment is working on Nigeria Competition Policy as a pre-requisite for finalising issues of enactment of Competition Law for Nigeria.

Presently, of the six draft competition bills only one draft bill, Federal Competition and Consumer Protection Bill (FCCP Bill) is under consideration by the Federal Government. On the directives of the Vice President of

Box 2: Proposal to Transform Consumer Council into Nigerian Trade and Competition Commission

The Federal Government of Nigeria is planning to transform the 'Consumer Protection Council (CPC)' into a new commission known as 'Nigerian Trade and Competition Commission (NTCC)'. The Permanent Secretary of the Federal Ministry of Commerce made this official disclosure on September 27, 2004.

The proposed Commission (NTCC) according to the Permanent Secretary, is expected to handle all issues relating to Consumer Protection, Competition Policy, Anti-dumping, Unfair Trade Practices and Weights and Measurements Administration.

The Federal Permanent Secretary said that the Bill for the transformation of CPC into NTCC has reached an advanced stage at the National Assembly and is yet to be passed.

The proposed NTCC has effectively addressed calls by various stakeholders and CSOs for a Nigerian Competition Law.

Source: Bulletin of Consumer Affairs Movement of Nigeria (CAMON) now CEON, Vol. 1, No.2, Aug-Sept 2004

Box 4: Anti-competition among Telecoms Operators Will Stifle Growth, Says NCC

The Nigerian Communications Commission (NCC) has said that anti-competitive behaviour among telecoms operating companies will bring huge setback to the growth of telecoms industry, if not addressed.

Director, Policy Competition and Economic Analysis for NCC, Mrs. Lolia Emakpore, who gave the hint in Lagos in an interview with THISDAY that NCC had come to realise that anti-competition would not only stifle growth of the industry, but would also erode the gains of telecommunications, which the commission had sustained in the past eleven years.

According to her, it was for this reason that the NCC held a meeting in Lagos recently to discuss with all stakeholders, including telecoms operators, to enable it come out with policy statement on fresh guidelines for healthy competition in the industry. She promised that the new policy statement would be released by the end of December, 2012.

She warned that NCC would apply sanction where necessary, should there be clear case of anti-competitive behaviour among telecoms operators.

"The Nigerian telecoms market has come a long way and it has grown so big that it has become important for NCC to look into the market and see the level of competition in the market. The essence of the stakeholders meeting is to help NCC define the market vertically and horizontally and to help it determine if there are dominant operators in the industry," Emakpore said.

"The outcome of the meeting will help NCC to further review and redevelop the existing laws and guidelines on anti-competition, in order to ensure that they adequately meet the needs of the market," she noted.

Source: http://www.thisdaylive.com/articles/anti-competition-among-telecoms-operators-will-stifle-growth-says-ncc/130661/

the Federal Republic of Nigeria, the Federal Ministry of Trade and Investment (FMTI) and Bureau of Public Enterprises (BPE) met in Lagos early 2012 to harmonise the pending draft bills with the FCCP Bill that had earlier been approved by the National Council on Privatisation. The retreat resolved as follows:

a) The Antitrust and Competition Bill 2005 having been factored into and all its elements embedded in the new FCCP Bill, the draft Antitrust and Competition Bill be set aside as having been overtaken by events;
b) The remaining 3 bills, Weights and Measures Bill 2005, Safeguards Bill 2005 and Dumped and Subsidised Goods Bill 2005 should be stand alone legislation and should not be included in the FCCP Bill; and
c) A Committee comprising the FMTI, Federal Ministry of Justice and BPE should work together to update the remaining three bills as international conventions that need to domesticated into Nigeria.

With the present scenario in Nigeria, it is certain that Nigeria is moving in the right direction towards enacting its competition law.

Endnotes

1 Prepared by Consumers Empowerment Organisation of Nigeria (CEON), formerly CAMON
2 Sure & Steady Transformation – Progress Report of President Goodluck Jonathan`s Administration, Vol1, 2012

† *Adedeji Babatunde Abiodun is the Founder Coordinator-General of CEON. (Founded CEON, then CAMON in 1995). He is also a Board of Trustee member of: All Nigeria Consumer Movements Union (ANCOMU). His professional interests/activities are: Consumer Protection, Competition, Trade, Environment and Sustainable Development. He has attended International seminars/workshops sponsored by: Consumers International, CUTS and UNCTAD on issues like: Consumer Protection, International Trade, Competition and Sustainable Development.*